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10 SAFEWAY INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 MICHAEL RODMAN, on behalf of himself  
and all others similarly situated,

15 Plaintiff,

16 v.

17 SAFEWAY INC.,

18 Defendant.  
19

Case No. 3:11-CV-03003-JST (JCS)

**STIPULATION AND ~~PROPOSED~~  
ORDER FURTHER AMENDING  
DAMAGES SUMMARY JUDGMENT  
ORDER**

The Honorable Jon S. Tigar

20 The parties to the above- captioned action, by and through their counsel, stipulate:  
21

22 WHEREAS, on March 10, 2014, this Court certified the following Class, solely for the  
23 purpose of bringing a breach of contract claim:

24 All persons in the United States who registered to purchase  
25 groceries through Safeway.com at any time prior to November 15,  
26 2011, and made one or more purchases subject to the price markup  
27 implemented on or about April 12, 2010 (the "Class").  
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1 Excluded from the Class are Defendant, as well as all employees of  
2 the judges assigned to this action in this Court, their spouses and any  
3 minor children living in their households, and other persons within a  
4 third degree relationship to any such federal judge; and finally, the  
5 entire jury venire called for jury service in relation to this lawsuit.  
6 Also excluded from the Class are any attorneys or other employees  
7 of any law firms hired, retained and/or appointed by or on behalf of  
8 the named Plaintiffs to represent the named Plaintiffs and/or any  
9 proposed Class members or proposed class in this lawsuit.

10 (ECF No. 163);

11 WHEREAS, on May 15, 2015, the parties jointly stipulated to dismiss with prejudice,  
12 pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, plaintiff's individual claims for  
13 violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., False  
14 Advertising Laws, Cal. Bus. & Prof. Code § 17500, et seq., and Consumers Legal Remedies Act,  
15 Cal. Civ. Code § 1750 (ECF No. 265);

16 WHEREAS, on February 12, 2015, this Court granted partial summary judgment to  
17 Plaintiff and the Class and found that "Safeway breached the contract by charging Plaintiff and the  
18 Class members who registered beginning in 2006 more than the prices permitted under the terms  
19 of the contract" and that "[t]he Class is entitled to damages even for purchases which occurred  
20 after the Special Terms were amended on November 15, 2011" (ECF No. 237);

21 WHEREAS, on August 31, 2015, the Court issued its Order 1) Denying Defendant's  
22 Motion For Partial Summary Judgment 2) Denying Plaintiff's Motion For Partial Summary  
23 Judgment As To Class Members Who Registered Prior To 2006 3) Granting Plaintiff's Motion  
24 For Summary Judgment As To Damages (the "Damages MSJ Order") (ECF No. 331);

25 WHEREAS, the Damages MSJ Order found that the Class was entitled to recover damages  
26 in the amount of \$30,979,262;  
27  
28

1 WHEREAS, on September 24, 2015, the parties submitted a Stipulation and [Proposed]  
2 Order Re Calculation of Damages Awarded by the Court pursuant to the Damages MSJ Order, and  
3 stated, among other things, that the \$30,979,262 figure in the Court's Damages MSJ Order  
4 included markup amounts for Class members, including those who registered before January 1,  
5 2006, whose claims had not yet been resolved (ECF No. 359);

6 WHEREAS, on September 24, 2015, Court issued its Order Amending Prior Order in  
7 which it struck "\$30,979,262" from the Damages MSJ Order and stated that it would file an  
8 Amended Order at the appropriate time (ECF No. 362);

9 WHEREAS, as reflected in submissions by the parties and orders of this Court (ECF Nos.  
10 371, 373, 374, 376-80, 383), trial of this case was continued from October 7, 2015 to December 7,  
11 2015 and additional discovery was permitted;

12 WHEREAS, on November 12, 2015, the parties submitted a Joint Stipulation and  
13 [Proposed] Order with respect to Class members who registered before January 1, 2006,  
14 stipulating that Class members who registered before January 1, 2006 entered into a contract with  
15 Safeway at the time of registration containing the following language:  
16

17 **Product Pricing and Service Charges**

18 The prices quoted on our Web site at the time of your order are  
19 estimated prices only. You will be charged the prices quoted for  
20 Products you have selected for purchase at the time your order is  
21 processed at checkout. The actual order value cannot be determined  
22 until the day of delivery because the prices quoted on the Web site  
23 are likely to vary either above or below the prices in the store on the  
24 date your order is filled and delivered.

25 (ECF No. 392);

26 WHEREAS, in the November 12, 2015 Joint Stipulation and [Proposed] Order, the parties  
27 further stipulated that the Court's prior summary judgment Orders (ECF Nos. 237 and 331) are  
28

1 equally applicable to Class members who registered before January 1, 2006, as they are to Class  
2 members who registered between January 1, 2006 and November 14, 2011;

3 WHEREAS, the parties' November 12, 2015 Joint Stipulation and [Proposed] Order  
4 resolved all issues that remained for trial, and the parties stated that they would work together to  
5 determine the amount of damages due to Class members pursuant to the Court's summary  
6 judgment Orders for submission to the Court;

7 WHEREAS, on November 20, 2015, the Court issued its Order entering the Joint  
8 Stipulation submitted by the parties at ECF No. 392 (ECF No. 397);

9 WHEREAS, the parties now wish to stipulate to the facts and findings set out below;

10 NOW, THEREFORE, the parties to the above-captioned action hereby stipulate and agree  
11 to the following:  
12

- 13 1. For the reasons stated in (a) the Court's "Amended Order Granting Plaintiff's Motion  
14 for Partial Summary Judgment" dated February 12, 2015 (ECF No. 237), (b) sections I,  
15 II, IIIA, and the first and third sentences of the Conclusions in the Court's "Order 1)  
16 Denying Defendant's Motion For Partial Summary Judgment 2) Denying Plaintiff's  
17 Motion For Partial Summary Judgment As To Class Members Who Registered Prior  
18 To 2006 3) Granting Plaintiff's Motion For Summary Judgment As To Damages"  
19 dated August 31, 2015 (ECF No. 331), (c) the parties' "Stipulation and [Proposed]  
20 Order Re Calculation of Damages Awarded by the Court" dated September 24, 2015  
21 (ECF No. 359), (d) the Court's "Order Amending Prior Order" dated September 24,  
22 2015 (ECF No. 362) and (e) the Court's Order dated November 19, 2015 (ECF No.  
23 397), the certified class, including Plaintiff Michael Rodman, is entitled to recover  
24 damages for breach of contract against defendant Safeway Inc. in the amount of  
25 \$30,979,262, plus pre-judgment interest computed at the rate of 10% per annum under  
26 California Civil Code Section 3289(b) from the date of each purchase transaction and  
27 continuing until the date the Court enters judgment.  
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2. The parties stipulate and agree to the following prejudgment interest calculations, depending on the date judgment is entered:

<u>DATE JUDGMENT ENTERED</u>	<u>PREJUDGMENT INTEREST ACCRUED AS OF DATE OF JUDGMENT</u>
Nov. 30, 2015	\$10,905,505
Dec. 1, 2015	\$10,913,993
Dec. 2, 2015	\$10,922,481
Dec. 3, 2015	\$10,930,968
Dec. 4, 2015	\$10,939,455
Dec. 5, 2015	\$10,947,943

3. Safeway continues to contest the Court's prior orders (ECF Nos. 163, 237, 331), and reserves its right to appeal from the final judgment in this action and raise as issues in that appeal error in the Court's prior orders or any other order made in this action.

Dated: November 30, 2015

REED SMITH LLP

By: /s/ Jonah D. Mitchell\*

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James A. Daire (SBN 239637)  
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SAFEWAY INC.

Dated: November 30, 2015

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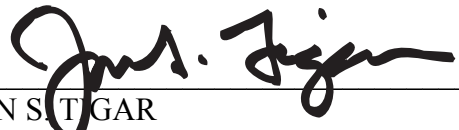
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Attorneys for Plaintiff  
MICHAEL RODMAN and the Class

*\* Filer's Attestation: Pursuant to Civil Local Rule 5-1(i) regarding signatures, Jonah D. Mitchell hereby attests that concurrence in the filing of this document has been obtained.*

1 **SO ORDERED:**

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4 DATED: November 30, 2015

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6 JON S. TIGAR  
7 United States District Judge  
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